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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/755,866	01/05/2001	Andreas Weigl	10191/1657	3677
26646	7590	06/02/2005	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			KADING, JOSHUA A	
			ART UNIT	PAPER NUMBER
			2661	

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/755,866

Applicant(s)

WEIGL ET AL.

Examiner

Joshua Kading

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4,5,7,9,15-19 and 21-25 is/are allowed.
- 6) ☒ Claim(s) 1-3,6,8 and 10-14 is/are rejected.
- 7) ☒ Claim(s) 20 and 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 20 and 26 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 20 recites, verbatim, the same limitations as in the parent claim 4. See lines 16-17 of claim 4.

Claim 26 recites, verbatim, the same limitations as in the parent claim 7. See lines 16-17 of claim 7.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, 6, 8, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,061,600, Ying in view of U.S. 5,666,358, Paratore et al. (Paratore).

Regarding claims 1 and 10, Ying discloses "a device for an exchange of data in messages between at least two users connected by a bus system, each one of the at

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least two users including at least one of a predefinable timing mark and an ascertainable timing mark, comprising the steps of: a means for causing the at least two users to transmit via the bus system messages including the data (*col. 7, lines 16-23*); means for causing a first one of the at least two users, in a function as timer, to control the messages as a function of time such that the first one of the at least two users repeatedly transmits a first reference message... via the bus system at a specifiable time interval (*col. 7, lines 31-42 where the periodic signals are the reference messages*); a means for causing, if the at least one of the predefinable timing mark and the ascertainable timing mark of a second one of the at least two users is reached without the first reference message of the first one of the at least two users reaching the second one of the at least two users (*col. 7, lines 35-39 where the wait period acts as an ascertainable timing mark of the slave node (second user) that is reached if the slave node does not receive a signal from the master node (first user)*), causing the second one of the at least two users to take over the function of timer by transmitting a second reference message with a second time information via the bus system (*col. 7, lines 39-42*)."

However, Ying lacks what Paratore discloses, "including a first time information regarding a time base of the first one of the at least two users (*col. 2, lines 15-19 where the reference time stamp sent by the master node is the time base of the first user*)".

It would have been obvious to one with ordinary skill in the art at the time of invention to include the sending of the time base with the rest of the device for the purpose of synchronizing the master node with the slave nodes (*Paratore, col. 2, lines*

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19-24). The motivation for synchronizing the master node with the slave nodes is so that they may continue to communicate with each other over the bus system.

Regarding claims 2 and 11, Paratore lacks what Ying further disclose, "means for providing each one of the at least two users as timers (*col. 7, lines 35-39 where the fact that the master node periodically sends out signals to the slave nodes is indicative of the master node acting as a timer (or at least the periodicity of the signals being sent out act as a timer) and where the wait period of the slave node allows the slave node to function as a timer*); and means for causing the first one of the at least two users and the second one of the at least two users to transmit via the bus system the first reference message with the first time information and the second reference message with the second time information when the at least one of the predefinable timing mark and the ascertainable timing mark of any of the at least two users has been reached without a receipt of a corresponding one of the first reference message and the second reference message (*col. 7, lines 31-42 whereby taking over the function of the master node the slave node is capable of performing all master node tasks, including the sending of time information to other nodes of the bus system*)."

It would have been obvious to one with ordinary skill in the art at the time of invention to include the further step of causing a user to take over when after a time limit has been reached for the same reasons and motivation as in claims 1 and 10.

Regarding claims 3 and 12, Paratore lacks what Ying further discloses, “means for subdividing the specifiable time interval into timing windows of a specifiable length (*col. 8, lines 30-33 whereby having the bus time-multiplexed each node is allotted a window length of time to use the bus*); and means for transmitting the messages including the data in the timing windows (*col. 8, lines 30-33 it is implied that the user would use the bus for transmitting the messages during its allotted time window*).” It would have been obvious to one with ordinary skill in the art at the time of invention to include the timing for the same reasons and motivation as in claims 1 and 10.

Regarding claims 8 and 13, Paratore lacks what Ying further discloses, “wherein the messages are cyclically transmitted (*col. 8, lines 30-33 whereby time multiplexing means that the each node gets a certain portion of time over a total time period and once the end of the period is reached, the cycle starts over again with node 1*).” It would have been obvious to one with ordinary skill in the art at the time of invention to include the cyclically transmitting for the same reasons and motivation as in claims 3 and 12.

Regarding claims 6 and 14, Paratore lacks what Ying further discloses, “means for allocating a priority with respect to the function as timer to those of the at least two users capable of being used as a timer (*col. 7, lines 45-49*).” It would have been obvious to one with ordinary skill in the art at the time of invention to include the priority allocating with the method of claim 1 so that only one slave node at a time will vie for control if there is a master node failure (*Ying, col. 7, lines 39-49 where it is suggested*

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that the prioritizing is a way of selecting which nodes will take over when). The motivation for the prioritizing is that it is clear which node will take over in case of failure and by doing so will not waste resources or time if two nodes were to try take control at the same time.

Allowable Subject Matter

4. Claims 4, 5, 7, 9, and 19-26 are allowed as indicated previously.
5. Claims 15-18, specifically claims 15 and 18, are allowable for the same reasons as claims 4 and 7 respectively because claims 15 and 18 are apparatus claims describing the methods of claims 4 and 7.

Response to Arguments

6. Applicant's arguments, see REMARKS, page 10, third paragraph, filed 23 December 2004, with respect to claim 10 have been fully considered and are persuasive. The objection of claims 10 has been withdrawn.

7. Applicant's arguments filed 23 December 2004 have been fully considered but they are not persuasive.

Applicant argues that the references used do not address the same problem as the claimed subject matter and therefore cannot be combined to read on applicant's invention. The examiner respectfully disagrees.

The courts have held that it is not necessary for the references used to have the same intended purpose (i.e. directed towards the same problem because the claimed invention can be used to solve many different problems, not just applicant's recognized problem) and motivation as the claimed invention under examination. See *In re Linter*, 458 F.2d 1013, 173 USPQ 560 (CCPA 1972) and *In re Dillon*, 919 F.2d 688, 16 USPQ2d 1897 (Fed. Cir. 1990), cert. denied, 500 U.S. 904 (1991). Further see MPEP § 2143.03.

8. Applicant's arguments, see REMARKS, page 11, last two paragraphs, filed 23 December 2004, with respect to the rejection(s) of claim(s) 1-3, 6, 8, and 10 under 35 U.S.C. 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of a further reading of the existing prior art in view of applicant's claimed invention.

9. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA


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1971). Further, as noted in the above rejections, portions of Paratore and Ying are specifically used to support the reasons for combining the references, therefore these reasons are not hindsight as they come from the prior art.

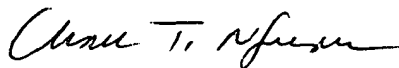
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua Kading whose telephone number is (571) 272-3070. The examiner can normally be reached on M-F: 8:30AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on (571) 272-3126. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Joshua Kading
Examiner
Art Unit 2661

May 24, 2005



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